

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE )  
SUBSTANTIAL DEVELOPMENT AND )  
CONDITIONAL USE PERMIT GRANTED )  
BY THE CITY OF SEATTLE TO THE )  
DEPARTMENT OF NATURAL RESOURCES, )

BONNIE SADLEIR-ORME, )

Appellant, )

v. )

CITY OF SEATTLE, STATE OF )  
WASHINGTON, DEPARTMENT OF )  
NATURAL RESOURCES and )  
DEPARTMENT OF ECOLOGY, PORT )  
OF SEATTLE, and KENT MILLER, )

Respondents. )

SHB No. 84-41

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter came before the Shorelines Hearings Board in four days of hearing: December 13, 1984, January 24, 1985, and January 25, 1985, in Seattle, Washington, and January 30, 1985, at the Board's office in Lacey, Washington. Sitting as the Board were Gayle Rothrock, Lawrence J. Faulk, Nancy R. Burnett, Richard A. O'Neal,

1 Dennis Derickson, and Wick Dufford. Mr. Dufford presided.

2 The hearings were preceded by pre-hearing conferences on October 1  
3 and October 19, 1984, and by three Pre-Hearing Orders, dated October  
4 5, October 26, and December 6, 1984.

5 Appellant Bonnie Sadleir-Orme appeared and represented herself.  
6 Respondent City of Seattle was represented by its Assistant City  
7 Attorney, Elizabeth A. Edmonds; respondent Department of Ecology was  
8 represented by Allen T. Miller, Jr., Assistant Attorney General;  
9 respondent Department of Natural Resources was represented by Victoria  
10 A. Sheldon, Assistant Attorney General; respondent Port of Seattle was  
11 represented by attorneys Charles R. Blumenfeld and Linda  
12 Christophersen of Bogle and Gates; and Kent Miller represented  
13 himself. Court reporters Donna K. Woods, Bibi Carter, and Janet Neer  
14 recorded the proceedings.

15 The decision in question is the granting by the City of Seattle of  
16 a substantial development and conditional use permit to the Washington  
17 State Department of Natural Resources (Division of Marine Land  
18 Management) to establish an open water dredge disposal site at a  
19 location in Elliott Bay southwesterly of Fourmile Rock. The approval  
20 was made by the City of Seattle on June 29, 1984. On July 23, 1984,  
21 the Washington State Department of Ecology approved the conditional  
22 use. Appellant Bonnie Sadleir-Orme sought review before this Board on  
23 August 9, 1984. Thereafter, the Board joined the Departments of  
24 Natural Resources and of Ecology as additional parties respondent.  
25 Subsequent motions to intervene by the Port of Seattle, Kent Miller

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1 and the Puget Sound Alliance were granted. The Port and Mr. Miller  
2 were made respondents and the Alliance became an additional appellant.

3 After appellant Orme commenced the presentation of her case on  
4 December 13, 1984, all parties reached an agreement to recess until a  
5 later date in the interest of pursuing a negotiated resolution of the  
6 dispute. Appellant Orme thereafter requested that the hearing be  
7 resumed and this was done commencing on January 24, 1985. Prior to  
8 this reconvening, however, the Puget Sound Alliance withdrew from the  
9 case.

10 In the hearing, witnesses were examined and exhibits were  
11 admitted. The testimony was transcribed. From the record made, the  
12 Board enters the following

#### 13 FINDINGS OF FACT

##### 14 I

15 The appellant Bonnie Sadleir-Orme resides in a home on shorelines  
16 lying below Magnolia Bluff in the City of Seattle. Hers is one of a  
17 number of waterfront homes on Perkins Lane. She is and has long been  
18 a user of the beach in front of her home. In former days she gathered  
19 shellfish from this beach for eating. In recent times she has been  
20 afraid to eat shellfish from the beach because of concerns about  
21 contamination.

##### 22 II

23 Respondent City of Seattle (the City) is a municipal corporation  
24 within which lies the open water dredge disposal site which is the  
25 focus of this controversy and is the issuing entity for the permits at

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1 issue. The Washington Department of Natural Resources (DNR) is a  
2 state agency which owns the submerged land on which the disposal site  
3 is located and is the permittee in this case. The Washington  
4 Department of Ecology (DOE) is a state agency with regulatory  
5 responsibilities under the Shoreline Management Act (SMA), RCW 90.58,  
6 including the duty to approve or disapprove shoreline conditional use  
7 permits issued by local governments. The Port of Seattle is a public  
8 entity formed under the laws of the state which, among other things,  
9 engages in the dredging of waterways in furtherance of navigation.  
10 Kent Miller is a principal of a private firm which as a part of its  
11 business is engaged in a project requiring dredging.

### 12 III

13 The substantial development and conditional use permit issued by  
14 the City to DNR under application No. 84-1530 allows the disposal of  
15 dredge spoils at a site commonly referred to as the Fourmile Rock  
16 disposal site. The site is an area of about 58 acres within a  
17 900-foot radius around a fixed point of reference in the deep subtidal  
18 waters of Elliott Bay seaward of the tidelands along Magnolia Bluff.

19 The permit document as issued incorrectly describes the center of  
20 the disposal site as Longitude 122° 25' 00" and Latitude 47° 33'  
21 35". This description contains a typographical error. The intended  
22 Latitude is 47° 37' 35" North.

23 Fourmile Rock itself is a natural feature on the Magnolia  
24 tidelands. The closest point on the perimeter of the disposal site  
25 lies approximately 1,300 yards southwesterly of the rock. The beach

1 is over 1,000 yards from the disposal site at its nearest point.

2 IV

3 Permitted use of the disposal site began with the issuance of a  
4 shoreline permit to DNR in May 1973. A second permit was issued on  
5 July 26, 1978.

6 From October of 1974 to May of 1978 approximately 840,000 cubic  
7 yards of dredged material was dumped at the site. From July of 1978  
8 to July of 1983, more than 1,830,000 cubic yards of sediments were  
9 deposited there.

10 The second permit expired on August 25, 1984. No dumping has been  
11 conducted at the site since then, pending resolution of the instant  
12 appeal.

13 The site has been used for spoils from dredging carried out to  
14 promote and maintain navigation and moorage in urbanized and  
15 industrial harbors and commercial waterways. The majority of material  
16 has been dredged from the Duwamish. However, substantial amounts have  
17 also come from Eagle Harbor on Bainbridge Island, Sitcum Waterway in  
18 Tacoma, the Lake Washington Ship Canal, and naval facilities in  
19 Bremerton.

20 V

21 Before engaging in the present permit process, DNR subjected the  
22 Fourmile Rock site to review by an Interagency Open Water Disposal  
23 Site Evaluation Committee, using detailed criteria set forth in WAC  
24 332-30-166. Among the criteria is a requirement that areas possessing  
25 uncommon or unusual biological or geological characteristics are to be

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1 avoided for dredge disposal. The committee determined that this and  
2 other selection guidelines were met at the Fourmile Rock site.

3 VI

4 On October of 1982, anticipating the expiration of the then  
5 effective permit for dredge disposal at the Fourmile Rock site, the  
6 City formed an inter-agency task force to review the problem of what  
7 to do with contaminated dredge spoils. The task force consisted of  
8 representatives from interested local, state and federal agencies,  
9 including the Municipality of Metropolitan Seattle (METRO), the Port  
10 of Seattle, DNR, DOE, the United States Environmental Protection  
11 Agency (EPA), the National Oceanographic and Atmospheric  
12 Administration (NOAA) and the United States Army Corps of Engineers  
13 (the Corps). This group met on numerous occasions in 1982 and 1983.  
14 The discussions dealt with dredge spoils problems generally and use of  
15 the Fourmile Rock site specifically.

16 DNR formally applied for a permit to replace the expiring  
17 authorization for Fourmile Rock on April 3, 1984. The application  
18 sought approval for an interim approach to disposal at the site,  
19 pending a thorough investigation of the environmental effects of using  
20 the site over a longer term. The investigation was to look both at  
21 the specific existing site and at possibilities and problems  
22 associated with alternative disposal locales. The approach was an  
23 outgrowth of the inter-agency task force process.

24 The concept was, essentially, to continue dumping at Fourmile Rock  
25 for two years under disposal standards which would prevent conditions

1 at the site from getting worse. At the end of that time, it was  
2 thought, the projected investigation would yield answers upon which to  
3 base a "final" decision on how or whether to continue using the site.

#### 4 VII

5 The City followed standard SMA publication and notice procedures.  
6 A public hearing was held on May 9, 1984. Testimony was taken there,  
7 and numerous letters were received about the permit proposal.

#### 8 VIII

9 The City's action on DNR's application on June 29, 1984, approved  
10 the interim permit concept and added specific conditions. The  
11 authorization was to "establish an open water dredge disposal site for  
12 one year with potential extension for a second-year and based on  
13 non-degradation standards."

14 The conditions covered four major subjects: 1) the  
15 non-degradation disposal criteria; 2) provisions for the time and  
16 proper placement of dumping; 3) requirements regarding the study of  
17 the site to be conducted during the next two years; and 4)  
18 prerequisites for extension of the permit for a second year.

#### 19 IX

20 DNR's application was accompanied by a completed environmental  
21 checklist for the Fourmile Rock open water disposal site and by a  
22 final declaration of non-significance (DNS) issued by DNR as lead  
23 agency. The DNS had been circulated as a proposal to appropriate  
24 entities but during the comment period, no responses were received  
25 calling this threshold determination into question.

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However, the City requested that DNR amend its final DNS to include sediment analysis data from METRO's Toxicant Pre-treatment Planning Study (TPPS). DNR complied with this request and concluded that, even with the additional data, the issuance of the DNS was appropriate.

x

Analysis of the chemistry of the sediments already dumped in the area of the Fourmile Rock disposal site in the METRO TPPS shows levels of heavy metals and organics which are higher than background levels derived from the relatively uncontaminated deep central basin of the Puget Sound. Heavy metals concentrations analyzed included copper, lead, cadmium, zinc, mercury, arsenic and chromium. Organics included PAH's, CPAH's, PCB's and DDT.

The concentrations found at the site were also substantially higher than the levels indicated by limited sampling of shallower waters off the Magnolia tidelands. Values for the latter were in the lowest range found in all areas sampled in the study. The TPPS focused on the West Point and Elliott Bay areas but included sampling throughout the Central Puget Sound basin.

XI

Evidence presented by appellant demonstrated the presence of some PAH's on the beach below her home. Expert testimony documented the extraordinary danger of such organics to the ecosystem as a general proposition, citing toxic, carcinogenic and mutagenetic impacts on fish. No such effects, however, were shown as to the biota of

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1 appellant's beach.

2 XII

3 The depth of water at the Fourmile Rock disposal site varies from  
4 364 to 560 feet. From the relatively flat bottom at the site the  
5 seabed slopes upward steadily through regular lines of contour to the  
6 tidal beach below Magnolia Bluff.

7 At the disposal site surface currents are of low velocity, flowing  
8 generally parallel to the shoreline along the bathymetric contours.  
9 Bottom currents are weak, exhibiting a similar flow pattern.

10 XIII

11 Appellant's theory that the heavy metals and organics being  
12 deposited in dredge spoils at the Fourmile Rock disposal site are  
13 migrating to the beach under Magnolia Bluff was not supported in the  
14 evidence. Indeed, there was substantial testimony tending to  
15 demonstrate that such migration from the disposal site to the beach is  
16 highly unlikely.

17 Once the dredged material sinks to the bottom, it is at a depth  
18 hundreds of feet below the beach level. For materials from the bottom  
19 to reach the beach would require them to move upslope. The current at  
20 this deep water locale is so feeble that erosion of the dredge piles  
21 is minimal, if it occurs at all. Any erosion there might be would  
22 follow equal or deeper depth lines.

23 A small percentage of the particulates dumped (possibly as low as  
24 one percent) will be put in suspension, mostly near the bottom. The  
25 minute numbers of particles near the surface should usually move

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1 parallel to the shore along predominant current patterns, generally  
2 flushing out to the main basin of the Sound. No evidence was  
3 presented showing the presence of floatables in any measurable  
4 quantity in the dredge spoils dumped at the site.

5 XIV

6 On several occasions in the past, dredge spoils, authorized for  
7 dumping within the Fourmile Rock site, have, in fact, been dumped  
8 off-site, closer to the Magnolia shore. It is possible that some  
9 floating materials from such illegal dumping might reach the beach  
10 during slack water with appropriate wind conditions.

11 XV

12 To the extent that pollution is contaminating the beach under  
13 Magnolia Bluff, the principal sources are likely the Duwamish River  
14 plume, which sweeps by the beach bearing as floatables those  
15 contaminants not deposited in the river's sediments, and materials  
16 carried from the combined sewer overflows at the end of Denny Way and  
17 at the 32nd Avenue West right-of-way.

18 XVI

19 The deep water habitat at the disposal site has not been  
20 identified as containing sensitive aquatic resources requiring special  
21 protection or as particularly important to marine life sought after by  
22 man. The principal deepwater macrofauna are clams, polychaetes,  
23 sipunculid worms, heart urchins and holothuroids. The latter three  
24 species dominate the biomass. Various bottom dwelling flatfish are  
25 also likely to be found in the area of the disposal site as well as

1 ratfish and spiny dogfish shark.

2 XVII

3 There has been little study of the biological impacts of the  
4 elevated chemistry in the sediments at the Fourmile Rock site. NOAA  
5 has recently conducted bioassays at numerous locations in Puget  
6 Sound. In general, these show a correlation between elevated  
7 chemistry and toxicity.

8 The evidence of bioassay work in the area of the Fourmile Rock  
9 site was limited to nine grab samples of sediments from the site, to  
10 each of which twenty small amphipods (rhepoxynius) were exposed in  
11 water for ten days. The survival rate of these organisms in Fourmile  
12 Rock samples correlated to rates for relatively remote, undeveloped  
13 areas. A significantly higher experience of toxicity resulted in  
14 samples taken from the lower Duwamish and Tacoma's upper Hylebos  
15 Waterway.

16 However, no data about effects on other organisms were offered.  
17 Studies looking at abnormalities or other non-lethal effects from  
18 exposure to Fourmile Rock sediments have apparently not been conducted.

19 XVIII

20 The non-degradation disposal criteria, requested by DNR, were  
21 developed for the interim permit by EPA. The City evidently intends  
22 use of the criteria to be flexible so long as non-degradation is the  
23 result. The permit states:

24 Use of the site by DNR and others shall be contingent  
25 upon the EPA using a nondegradation disposal  
26 criteria, similar to that described in the attached  
document. Changes may be made to the criteria if

1 they are designed to prevent degradation or improve  
2 the site. All material placed at the site after the  
3 effective date of this permit shall comply with those  
4 standards.

5 The "attached document" referred to is entitled "Interim Decision  
6 Criteria for Disposal of Dredged Material at the Four-Mile Rock  
7 Open-Water Disposal Site" and consists of eighteen pages of  
8 single-spaced text and a vicinity map.

9 The basic approach of the criteria is to subject sediments  
10 proposed for disposal to two kinds of tests: chemical analysis and  
11 bioassays. The chemical test requires that pollutant concentrations  
12 be within a percentage range close enough to the arithmetic mean of  
13 samples previously taken from the disposal site to assure that,  
14 overall, the concentrations of pollutants hereafter dumped at the site  
15 are not higher than what is already there. Under the test, most of  
16 the chemical samples previously taken from the site could not be  
17 approved for disposal there in the future.

18 The bioassays contemplate exposing the amphipod used with Fourmile  
19 Rock samples in the NOAA study to sediments proposed for dumping at  
20 the site. The mean survival must be statistically greater than or  
21 equal to the mean survival found in the NOAA tests. Additionally, an  
22 oyster larvae bioassay, testing for abnormality or mortality, is  
23 proposed for use as soon as a base-line is established from samples  
24 taken near the Fourmile Rock site.

25 In order to be approved for dumping at the site, materials would  
26 have to pass both the chemical and the bioassay tests.

XIX

The un rebutted opinion of experts was that use of the interim decision criteria would result in the dumping of material at the site which is cleaner than that already there. Toxic materials would be eliminated.

Moreover, any pollutants contained in newly dumped material would not worsen conditions cumulatively. This is because the new material is to be dumped on top of the old and thereby will, it is predicted, provide a capping effect, sealing the more contaminated underlying sediments from the marine environment.

XX

The City's reliance on EPA's chemical and biological testing of proposed dredge spoils arises from EPA's role under Section 404 of the Federal Clean Water Act. Section 404 requires a permit from the Corps in order to dispose of dredge spoils in navigable waters at specified sites. EPA has the authority to veto any such permit based on its analysis of adverse effects. In the past EPA has used an ad hoc approach to dumping at the Fourmile Rock site based on "best engineering judgment." The proposed new "interim criteria" represent at once a more formalized set of standards for evaluating disposal projects and a more conservative approach to what is to be allowed to be dumped.

The procedural effect is to make compliance with the City's shoreline permit contingent upon each dumper's obtaining a Section 404 permit based on non-degradation criteria. The federal permit

1 requirement is further integrated into the state shoreline management  
2 scheme through the individual permits for each disposal operation  
3 issued by DNR to those who use its site.

4 XXI

5 The problem of off-site dumping is dealt with directly by the  
6 City's permit. DNR must condition all dumps with the following  
7 language:

8 Dumping shall not occur until the tug boat operator  
9 has received confirmation from the U.S. Coast Guard  
Vessel Traffic System that the barge is on site.

10 The Coast Guard system presently provides radar coverage of the site  
11 and can advise vessels by radio precisely when they are in the proper  
12 position to dump. The Coast Guard has agreed to cooperate in  
13 providing this information.

14 XXII

15 On the record before this Board there is no evidence that dumping  
16 of dredge spoils at the Fourmile Rock site, as limited and conditioned  
17 by the permit, would violate any established environmental standard,  
18 result in cumulative harm from its contributions to existing adverse  
19 conditions, or increase the pace of environmental degradation. The  
20 permit as designed should improve the status quo as to the quality of  
21 materials dumped, as to the certainty that such materials are dumped  
22 in the right place, and as to the overall levels of contamination  
23 contacting the environment at the site.

24 No off-site contamination has been shown and the limited data on  
25 impacts from on-site contamination do not identify severe biological

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1 stress. As a factual matter, appellant has failed to establish that  
2 more than a moderate effect on the quality of the environment is a  
3 reasonable probability from depositing spoils at the site pursuant to  
4 the permit.

5 XXIII

6 Nonetheless, the record does disclose that all the experts believe  
7 a more extensive data base should be assembled on the interaction  
8 between the spoils deposited at the site and the marine life in the  
9 area. The permit calls for a detailed study directed, among other  
10 things to this end. The extension of the permit, from one to two  
11 years, is contingent upon progress shown toward completing this study.

12 XXIV

13 Two years is the outside limit on the activity being proposed.  
14 Beyond that time frame, use of the site at all will be treated as a  
15 new project, requiring a new application and a new analysis. There is  
16 no necessary functional relationship between the present proposal and  
17 future activities. Similarly, the present proposal, as an interim  
18 proposal for the particular site, is sui generis and will not serve as  
19 a precedent for future actions.

20 XXVI

21 Cumulative effects from long-term exposure to toxicants deposited  
22 at the Fourmile Rock site cannot occur as a result of the instant  
23 permit proposal. This is because the permit is of short-duration,  
24 conditioned on a study which must address environmental dangers over  
25 time. Long-term options for the site--including continued use,

1 abandonment, sealing or clean-up--will be evaluated and the relevant  
2 environmental impacts will be disclosed before any public decisions  
3 about such options are made.

#### 4 XXVI

5 Inherent in the adoption of the interim criteria for the Fourmile  
6 Rock site is a decision that materials which violate the  
7 non-degradation tests must go somewhere else. The Port of Seattle has  
8 applied for permission to use the area between its Piers 90 and 91 for  
9 dredged material that will not meet the criteria for Fourmile Rock.  
10 Approximately 100,000 cubic yards of volume could be disposed of by  
11 this landfill option, if it were approved.

12 Upland disposal sites near dredging areas are in exceedingly short  
13 supply. Use of such sites is far more expensive than open water  
14 disposal. Depending on the site, upland disposal could double or  
15 triple the cost of disposing of Duwamish dredge spoils. Such high  
16 costs could lead to decisions to forego dredging in some cases, at  
17 least for the near future.

#### 18 XXVII

19 The "shoreline" area to be used is seaward of the line of extreme  
20 low tide under hundreds of feet of water at all times. The site is in  
21 an area designated "Conservancy Natural" (CN) under the Seattle  
22 Shoreline Master Program. Deep water dredge disposal is a conditional  
23 use in this designation.

#### 24 XXVIII

25 The proposed short-term use of the site for disposal is in aid of



1 navigation at areas dredged. The site itself is in navigable waters,  
2 but navigation over the area will be unaffected except for an  
3 occasional variance in traffic flow in the immediate area during  
4 periods when disposal is occurring.

5 Given that materials from the site have not been shown to migrate  
6 to tidelands, use of Magnolia's beaches will not be interfered with.  
7 The enjoyment of normal public use of the such beaches and adjacent  
8 uplands also is protected by limitations on noise and hours of  
9 operation at the disposal site. Dumping operations are prohibited  
10 during the night and limited during the day to 55 db(A) as measured at  
11 the dry land residential property nearest the site.

12 XXXVIX

13 Any Conclusion of Law which should be deemed a Finding of Fact is  
14 hereby adopted as such.

15 From these Findings the Board comes to these

16 CONCLUSIONS OF LAW

17 I

18 The Board has jurisdiction over the persons and over the subject  
19 matter of this proceeding.

20 II

21 In any review of the granting or denial of a permit under the SMA,  
22 the person requesting the review has the burden of proof. RCW  
23 90.58.140(7). Here that burden was on appellant Orme. The basic  
24 standard of review is whether the permitted development "is consistent  
25 with the applicable master program and the provisions of chapter 90.58

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1 RCW." RCW 90.58.140(2)(b).

2 III

3 The permit system of the SMA is inextricably interrelated with and  
4 supplemented by the requirements of the State Environmental Policy Act  
5 (SEPA), chapter 43.21C RCW. Sisley v. San Juan County, 89 Wn. 2d 78,  
6 5679 P.2d 712 (1977). The Board's function includes review of  
7 compliance with the requirements of SEPA.

8 IV

9 Based on the entire record, we conclude that environmental factors  
10 were evaluated to such an extent as to constitute prima facie  
11 compliance with SEPA procedural requirements. Hayden v. Port  
12 Townsend, 93 Wn. 2d 870, 613 P.2d 1164 (1980). Appellant did not  
13 adduce evidence of adverse environmental effects sufficient to  
14 undercut this prima facie compliance.

15 V

16 Because a reasonable probability of a more than moderate effect on  
17 the quality of the environment was not shown, no necessity for an  
18 environmental impact statement under SEPA for the instant short-term  
19 permit was established. ASARCO v. Air Quality Coalition, 92 Wn. 2d  
20 685, 601 P.2d 501 (1979).

21 VI

22 Even if the SEPA threshold decision were not otherwise  
23 supportable, the conditions included in the permits pursuant to the  
24 SMA would so mitigate adverse effects as to support a DNS. Similarly,  
25 these conditions effectively eliminate future and precedential impacts

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1 so as to render the scope of the project considered by the City proper  
2 for the purposes of the SEPA threshold.

3 VII

4 A SEPA threshold determination by its nature focuses on the  
5 potential environmental significance of a particular use of a  
6 particular site. If the project impacts are likely to be moderate,  
7 there is no need to look at what impacts of the same action might have  
8 at another site. Alternative sites, thus, need not be considered  
9 prior to issuing a DNS.

10 VIII

11 No defect as to notice of the permit application under the SMA was  
12 shown.

13 IX

14 The dredging of marine beds for the maintenance and improvement of  
15 navigable harbors and waterways is consistent with the public interest  
16 as reflected in the policies of the SMA. A major focus to the Act is  
17 to limit projects which reduce navigation, not those which aid it.  
18 Ports are priority developments among those allowed to alter natural  
19 conditions. The dredging of marine beds presupposes the disposal of  
20 the resultant spoils. Deep water disposal of such spoils, if  
21 otherwise consistent with SMA policies, furthers the Act's  
22 navigational aims. This is particularly true where channel or harbor  
23 dredging might be foregone if a deep water disposal site were not  
24 available.

X

The SMA contemplates fostering "reasonable and appropriate uses" within its broad policies as to all shorelines. In addition to focusing on navigation, these policies generally look to limiting adverse environmental effects and promoting public access to the water. Use of the proposed deep water disposal site at Fourmile Rock, as conditioned, is not inconsistent with the general policy statements of the Act. RCW 90.58.020.

XI

Because the site is in the Puget Sound and seaward from the line of extreme low tide, it is, by definition, a "shoreline of statewide significance." RCW 90.58.030(2)(e)(iii). We conclude, however, that use of the site for dredge spoil disposal, as conditioned, does not violate the additional special preferences established for shorelines of statewide significance.

To the extent that the proposed disposal facilitates a necessary transportation system, it promotes interests far beyond the local interest, and serves the ends of public access to publicly owned shoreline areas. See DNR v. Island County, SHB No. 77-8 (1977).

Moreover, in itself, the disposal will not interfere with waterborne recreation or with any activity at the margins of land and water. Changes will occur in the natural character of the seabed, but no immoderate effect on resources or the ecology has been identified and there will be no aesthetic effect which is readily perceivable.

XII

Seattle City Council Resolution 2713 adopts general goals and policies for the City's shoreline master program. Sections (A)1, (A)3 and (D)1 read, in pertinent part, as follows:

(A) SHORELINE USE

Goal:

1. Establish uses which result in long-term over short-term benefit.

a) Policy:

Permit only those uses or conditions which allow optional uses for future generations unless identified benefits clearly outweigh the physical, social and/or economic loss to future generations.

...

Goal:

3. Provide a management system which will plan for and permit all reasonable and appropriate use through a system of priorities.

a) Policy:

Competition between uses for shoreline does not generally occur at one moment, but over a period of time. Water dependent uses generally have priority.

Preference will be given in the following order:

1. Protection and enhancement of natural areas of systems--those identified as containing or having unique geological, ecological or biological significance.

...

2. Water dependent uses--all uses that cannot exist in any other location and are dependent on the water by reason of the intrinsic nature of their operations.

1 ...

- 2 3. Non-water dependent uses--those uses  
3 which do not need a waterfront  
4 location to operate though easements  
5 or utility corridors for access to  
6 the water may be desired.

7 ...

8 (D) CONSERVATION

9 Goal:

- 10 1. Preserve, protect and restore areas such as  
11 those necessary for the support of wild and  
12 aquatic life or those identified as having  
13 geological or biological significance.

14 a) Policy:

15 Identify those areas which are necessary  
16 for the support of wild and aquatic life  
17 and those having geological or  
18 biological significance and prohibit or  
19 severely restrict development in those  
20 areas.

21 ...

22 c) Policy:

23 Prohibit any use or development which  
24 will significantly degrade air, land,  
25 submerged land or water quality.

26 d) Policy:

27 Identify those areas which have a  
potential for restoration to "natural"  
conditions, develop standards for the  
conditions in those areas, and provide  
incentives for achieving such standards.

XIII

The proposed short-term permits for the Fourmile Rock site does  
not violate these general goals and policies of Council Resolution  
2713.

The basic idea of the goal and policy favoring long-term benefit

1 is to preserve the option for future generations to devote shorelines  
2 to the most beneficial uses. It is precisely this option for future  
3 choice which the instant permit preserves. The maximum two-year term,  
4 coupled with the requirement for in-depth study of both the site and  
5 alternative sites, is a regulatory design which contemplates  
6 reassessment of the current use and a possible change of use based on  
7 the information derived.

8 The goal and policy relating to a system of priorities means that  
9 uses assigned a high priority shall be preferred over those of lower  
10 priority when some competition among uses can reasonably be  
11 anticipated. It does not mean that all undeveloped shoreline areas  
12 must be left in their natural state, or that non-water dependent uses  
13 cannot be approved. The instant permit relates to an area where no  
14 unique geological, ecological or biological significance has been  
15 identified. Further, while dredge spoil disposal is not  
16 water-dependent, the concept of water dependency is designed to insure  
17 that uses which must have a shoreline location to exist are not  
18 precluded by uses which have no such need. Considering the term in  
19 this sense, there is no indication that the short-term dredge spoil  
20 disposal permit will operate to preclude any water dependent use  
21 (other than natural preservation) which might be made of the site.

22 Finally, the conservation goal and policies relating to  
23 preserving, protecting and restoring the environment are all concerned  
24 with areas of identified geological or biological importance. Again,  
25 the seabed at the Fourmile Rock site has not been shown to have any

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1 special significance in its natural condition. Moreover, the permit  
2 as conditioned should prevent its further degradation and, indeed,  
3 alter conditions for the better.

#### 4 XIV

5 The Seattle Shoreline Master Program includes the following  
6 statements of purpose for the CN Environment in Subsections  
7 24.60.330(B) and (C).

8 B. The emphasis in the CN shoreline environment is  
9 on preservation and restoration of natural systems  
10 and resources; and on prevention or regulation of  
11 uses or activities which would degrade the natural  
12 environment. Any proposed activity which would  
13 change the existing situation would be desirable only  
14 if it further enhances, restores or preserves the  
15 natural character of the area so classified.

16 C. The purpose of the CN shoreline environment  
17 designation is to preserve, regulate or restore an  
18 area to its natural state, as nearly as possible  
19 without human influence. Within such areas, only  
20 activities which further, preserve, enhance or  
21 restore the existing natural geological, biological  
22 or hydrological conditions will be permitted such  
23 as: feeding, habitat improvement, ecological  
24 observation and study or research, or other closely  
25 related activities.

#### 18 XV

19 As noted, there is no evidence that the proposed use of the  
20 Fourmile Rock site will degrade the natural environment. The  
21 environment at the site is already affected by past activity and  
22 already degraded to some degree. The permits should result in a  
23 cleaner site.

24 However, the use does appear to conflict with the underlying  
25 notion that the CN designation is for the preservation and restoration



1 of natural systems. The natural system at the site is no longer in  
2 existence. Its true restoration would require an effort to reproduce  
3 its original state. Nothing of the kind is contemplated in the  
4 instant permit.

5 XVI

6 But, the purpose statements for the CN designation must be read in  
7 conjunction with the use regulations which implement them.

8 Under RCW 90.58.100(5) each master program must contain provisions  
9 for variances and conditional use permits "to insure that strict  
10 implementation of the program will not create unnecessary hardship or  
11 thwart the policy enumerated in RCW 90.58.020." The Seattle master  
12 program has such provisions. The use regulations of Section 24.60.420  
13 identify landfill on submerged lands as a conditional use in a CN  
14 environment. Section 24.60.730 deals specifically with the matter:

15 Landfill for natural beach protection...is permitted  
16 as a special use in the CN environment. Landfill  
17 which reduces the area of the water's surface is  
18 prohibited. All other landfill including dredge  
19 disposal is a conditional use in the CN environment.  
20 Solid waste such as broken concrete, building debris,  
21 appliances, car bodies, vegetation, flammable  
22 material, or water soluble and/or toxic waste are  
23 prohibited as fill material on both wetlands and  
24 submerged lands.

25 The City has adopted the criteria promulgated by DOE in WAC 173-14-140  
26 for evaluating conditional use applications.

27 Thus, notwithstanding the general policies for the CN designation,  
an overarching policy of the City's master program is to allow uses  
specifically identified as conditional uses when the relevant WAC  
standards are met.

WAC 173-14-140 reads:

The purpose of a conditional use permit is to allow greater flexibility in varying the application of the use regulations of the master program in a manner consistent with the policies of RCW 90.58.020: Provided, That conditional use permits should also be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use.

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided the applicant can demonstrate all of the following:

(a) That the proposed use will be consistent with the policies of RCW 90.58.020 and the policies of the master program.

(b) That the proposed use will not interfere with the normal public use of the public shorelines.

(c) That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.

(d) That the proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is to be located.

(e) That the public interest suffers no substantial detrimental effect.

(2) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate, in addition to the criteria set forth in WAC 173-14-140(2) above, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the master program.

(3) Uses which are specifically prohibited by the master program may not be authorized.

(4) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses should also remain consistent with the policies of RCW 90.58.020 and should not

1 produce substantial adverse effects to the shoreline  
2 environment.

3 XVIII

4 We conclude that the permit at issue meets the criteria of WAC  
5 173-14-140 and, therefore, is consistent with the Seattle Shoreline  
6 Master Program. In particular, we conclude that no unreasonably  
7 adverse effects to the environment designation will result. The  
8 purpose is to prohibit "toxic waste" as that term is used in Section  
9 24.60.730. (See Conclusions of Law X, XI, XIII, XVI; Findings of  
10 Fact XIII, XVII, XIX, XXI, XXVI, XXVIII.)

11 XIX

12 If the experience under the permit works out as predicted, the  
13 proposed dredge disposal use will meet the legal standards established  
14 under the SMA. In light of the expected "capping" effect by cleaner  
15 material, it is unnecessary to condition the permit upon the maximum  
16 volumes allowed to be dumped. If all goes well, the more the better.

17 However, there is a clear need for the City to be informed on an  
18 ongoing basis about whether things are, in fact, proceeding as  
19 planned. The lawful result depends critically on monitoring to insure  
20 both that permit conditions are being observed and that the dumping is  
21 having the anticipated non-degradation effect.

22 In addition, the permit should provide for what happens if on-site  
23 monitoring shows--contrary to expectations--that dumping pursuant to  
24 the interim criteria is having significant adverse environmental  
25 effects. Such effects could include either increased concentrations  
26 of chemical contaminants in the upper sediment layers or evidence of

1 toxic biological impacts. If such results were to occur, both the SM  
2 and the master program would be violated and operations under the  
3 permit should cease.

4 XX

5 The matter should be remanded to the City to issue a permit which  
6 contains additional conditions to the following effect:

- 7 1. All results of future chemical analysis and bioassays from the  
8 site shall be reported to the City as soon as available. If  
9 at any time it becomes apparent that the non-degradation  
10 objectives are not being met, the City shall, on reasonable  
11 notice, suspend operations hereunder. Each permit issued by  
12 DNR shall advise that it is subject to such a suspension of  
13 the underlying shoreline permit.
- 14 2. DNR shall require that its permittees certify after each  
15 disposal operation that Coast Guard confirmation of on-site  
16 location was received before dumping. Any reports of  
17 information alleging off-site dumping received by DNR must be  
18 reported to the City as soon as practicable.

19 In addition, the City should correct the permit to describe the  
20 location of the disposal site correctly.

21 XXXI

22 Any Finding of Fact which should be deemed a Conclusion of Law is  
23 hereby adopted as such.

24  
25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
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1 From these Conclusions, the Board enters this

2 ORDER


3 The action of the City of Seattle in issuing a shoreline  
4 substantial development and conditional use permit is affirmed, except  
5 insofar as those matters stated in Conclusions of Law XIX and XX are  
6 concerned. The permit is remanded to the City for reissuance in  
7 accordance therewith.


8 DATED this 7th day of April, 1985.

9 SHORELINES HEARINGS BOARD

10  
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